

OUR FILE NUMBER : CMI 35-29197 (JMR/RMF-6)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DIONISIO POLANCO,

X

**Index Number:
07 CIV 7728**

Plaintiff,

JUDGE HOLWELL

-against-

VERIFIED ANSWER

NELMOR CO., INC., AEC NELMOR and AEC INC.,

Defendants.

X

**DEFENDANTS
DEMAND A JURY
TRIAL ON ALL ISSUES**

Defendants, **NELMOR CO., INC., AEC NELMOR and AEC INC.**, by their attorneys, BIVONA & COHEN, P.C., as and for their Verified Answer to Plaintiff's Verified Complaint, allege upon information and belief:

AS AND FOR A RESPONSE TO THE FIRST CAUSE OF ACTION

FIRST: Defendants deny knowledge or information sufficient to form a belief as to each and every allegation of the paragraph of the Verified Complaint designated "1", and respectfully refers all questions of law, fact and/or conclusions raised therein to the Trial Court.

SECOND: Defendants deny knowledge or information sufficient to form a belief as to each and every allegation of the paragraph of the Verified Complaint designated "2", and respectfully refers all questions of law, fact and/or conclusions raised therein to the Trial Court.

THIRD: Defendant, **NELMOR CO., INC.**, denies each and every allegation of the paragraph of the Verified Complaint designated "3", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

FOURTH: Defendant, **NELMOR CO., INC.**, denies each and every allegation of the paragraph of the Verified Complaint designated "4", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

FIFTH: Defendant, **AEC NELMOR**, denies each and every allegation of the paragraph of the Verified Complaint designated "5", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

SIXTH: Defendant, **AEC INC.**, denies each and every allegation of the paragraph of the Verified Complaint designated "6", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

SEVENTH: Defendant, **NELMOR CO., INC.**, denies each and every allegation of the paragraph of the Verified Complaint designated "7", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

EIGHTH: Defendant, **AEC NELMOR**, admits each and every allegation of the paragraph of the Verified Complaint designated "8".

NINTH: Defendant, **AEC INC.**, admits each and every allegation of the paragraph of the Verified Complaint designated "9".

TENTH: Defendant, **NELMOR CO., INC.**, denies each and every allegation of the paragraph of the Verified Complaint designated "10", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial. .

ELEVENTH: Defendant, **AEC NELMOR**, denies each and every allegation of the paragraph of the Verified Complaint designated "11", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

TWELFTH: Defendant, **AEC INC.**, denies each and every allegation of the paragraph of the Verified Complaint designated "12", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

THIRTEENTH: Defendant, **NELMOR CO., INC.**, denies each and every allegation of the paragraph of the Verified Complaint designated "13", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

FOURTEENTH: Defendant, **AEC NELMOR**, denies each and every allegation of the paragraph of the Verified Complaint designated "14", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

FIFTEENTH: Defendant, **AEC, INC.**, admits each and every allegation of the paragraph of the Verified Complaint designated "15".

SIXTEENTH: Defendant, **NELMOR CO., INC.**, denies each and every allegation of the paragraph of the Verified Complaint designated "16", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

SEVENTEENTH: Defendant, **AEC NELMOR**, denies each and every allegation of the paragraph of the Verified Complaint designated "17", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

EIGHTEENTH: Defendant, **AEC INC.**, admits each and every allegation of the paragraph of the Verified Complaint designated "18".

NINETEENTH: Defendant, **NELMOR CO., INC.**, denies each and every allegation of the paragraph of the Verified Complaint designated "19", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

TWENTIETH: Defendant, **AEC NELMOR**, denies each and every allegation of the paragraph of the Verified Complaint designated "20", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

TWENTY-FIRST: Defendant, **AEC INC.**, denies each and every allegation of the paragraph of the Verified Complaint designated "21", and

respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

TWENTY-SECOND: Defendant, **NELMOR CO., INC.**, denies each and every allegation of the paragraph of the Verified Complaint designated "22", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

TWENTY-THIRD: Defendant, **AEC NELMOR**, denies each and every allegation of the paragraph of the Verified Complaint designated "23", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

TWENTY-FOURTH: Defendant, **AEC, INC.**, denies each and every allegation of the paragraph of the Verified Complaint designated "24", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

TWENTY-FIFTH: Defendant, **NELMOR CO., INC.**, admits each and every allegation of the paragraph of the Verified Complaint designated "25".

TWENTY-SIXTH: Defendant, **AEC NELMOR**, denies each and every allegation of the paragraph of the Verified Complaint designated "26", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

TWENTY-SEVENTH: Defendant, **AEC, INC.**, denies each and every allegation of the paragraph of the Verified Complaint designated "27", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

TWENTY-EIGHTH: Defendant, **NELMOR CO., INC.**, denies each and every allegation of the paragraph of the Verified Complaint designated "28", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

TWENTY-NINTH: Defendant, **AEC NELMOR**, denies each and every allegation of the paragraph of the Verified Complaint designated "29", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

THIRTIETH: Defendant, **AEC, INC.**, denies each and every allegation of the paragraph of the Verified Complaint designated "30", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

THIRTY-FIRST: Defendants deny knowledge or information sufficient to form a belief as to each and every allegation of the paragraph of the Verified Complaint designated "31", and respectfully refers all questions of law, fact and/or conclusions raised therein to the Trial Court.

THIRTY-SECOND: Defendant, **NELMOR CO., INC.**, denies knowledge or information sufficient to form a belief as to each and every allegation of the

paragraph of the Verified Complaint designated "32", and respectfully refers all questions of law, fact and/or conclusions raised therein to the Trial Court.

THIRTY-THIRD: Defendant, **AEC NELMOR**, denies knowledge or information sufficient to form a belief as to each and every allegation of the paragraph of the Verified Complaint designated "33", and respectfully refers all questions of law, fact and/or conclusions raised therein to the Trial Court.

THIRTY-FOURTH: Defendant, **AEC, INC.**, denies knowledge or information sufficient to form a belief as to each and every allegation of the paragraph of the Verified Complaint designated "34", and respectfully refers all questions of law, fact and/or conclusions raised therein to the Trial Court.

THIRTY-FIFTH: Defendant, **NELMOR CO., INC.**, denies knowledge or information sufficient to form a belief as to each and every allegation of the paragraph of the Verified Complaint designated "35", and respectfully refers all questions of law, fact and/or conclusions raised therein to the Trial Court.

THIRTY-SIXTH: Defendant, **AEC NELMOR**, denies each and every allegation of the paragraph of the Verified Complaint designated "36", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

THIRTY-SEVENTH: Defendant, **AEC, INC.**, denies each and every allegation of the paragraph of the Verified Complaint designated "37", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

THIRTY-EIGHTH: Defendant, **NELMOR CO., INC.** denies knowledge or information sufficient to form a belief as to each and every allegation of the paragraph of the Verified Complaint designated "38", and respectfully refers all questions of law, fact and/or conclusions raised therein to the Trial Court.

THIRTY-NINTH: Defendant, **AEC NELMOR**, denies each and every allegation of the paragraph of the Verified Complaint designated "39", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

FORTIETH: Defendant, **AEC, INC.**, denies each and every allegation of the paragraph of the Verified Complaint designated "40", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

FORTY-FIRST: Defendant, **NELMOR CO., INC.**, denies knowledge or information sufficient to form a belief as to each and every allegation of the paragraph of the Verified Complaint designated "41", and respectfully refers all questions of law, fact and/or conclusions raised therein to the Trial Court.

FORTY-SECOND: Defendant, **AEC NELMOR**, denies each and every allegation of the paragraph of the Verified Complaint designated "42", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

FORTY-THIRD: Defendant, **AEC, INC.**, denies each and every allegation of the paragraph of the Verified Complaint designated "43", and

respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

FORTY-FOURTH: Defendants deny knowledge or information sufficient to form a belief as to each and every allegation of the paragraph of the Verified Complaint designated "44", and respectfully refers all questions of law, fact and/or conclusions raised therein to the Trial Court.

FORTY-FIFTH: Defendant, **NELMOR CO., INC.**, denies knowledge or information sufficient to form a belief as to each and every allegation of the paragraph of the Verified Complaint designated "45", and respectfully refers all questions of law, fact and/or conclusions raised therein to the Trial Court.

FORTY-SIXTH: Defendant, **AEC NELMOR**, denies each and every allegation of the paragraph of the Verified Complaint designated "46", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

FORTY-SEVENTH: Defendant, **AEC, INC.**, denies each and every allegation of the paragraph of the Verified Complaint designated "47", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

FORTY-EIGHTH: Defendants deny each and every allegation of the paragraph of the Verified Complaint designated "48", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

FORTY-NINTH: Defendant, **NELMOR CO., INC.**, denies each and every allegation of the paragraph of the Verified Complaint designated "49", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

FIFTIETH: Defendant, **AEC NELMOR**, denies each and every allegation of the paragraph of the Verified Complaint designated "50", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

FIFTY-FIRST: Defendant, **AEC INC.**, denies each and every allegation of the paragraph of the Verified Complaint designated "51", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

FIFTY-SECOND: Defendants deny each and every allegation of the paragraph of the Verified Complaint designated "52", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

AS AND FOR A RESPONSE TO THE SECOND CAUSE OF ACTION

FIFTY-THIRD: In response to paragraph "53" of the Verified Complaint, these answering defendants repeat, reiterate and reallege each and every response to allegations of the paragraphs of the Verified Complaint designated "1" through "52", as if more fully set forth at length herein.

FIFTY-FOURTH: Defendants deny each and every allegation of the paragraph of the Verified Complaint designated "54", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

FIFTY-FIFTH: Defendant, **NELMOR CO., INC.**, denies each and every allegation of the paragraph of the Verified Complaint designated "55", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

FIFTY-SIXTH: Defendant, **AEC NELMOR**, denies each and every allegation of the paragraph of the Verified Complaint designated "56", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

FIFTY-SEVENTH: Defendant, **AEC INC.**, denies each and every allegation of the paragraph of the Verified Complaint designated "57", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

FIFTY-EIGHTH: Defendants deny each and every allegation of the paragraph of the Verified Complaint designated "58", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

AS AND FOR A RESPONSE TO THE THIRD CAUSE OF ACTION

FIFTY-NINTH: In response to paragraph "59" of the Verified Complaint, these answering defendants repeat, reiterate and reallege each and

every response to allegations of the paragraphs of the Verified Complaint designated "1" through "58", as if more fully set forth at length herein.

SIXTIETH: Defendant, **NELMOR CO., INC.**, denies each and every allegation of the paragraph of the Verified Complaint designated "60", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

SIXTY-FIRST: Defendant, **AEC NELMOR**, denies each and every allegation of the paragraph of the Verified Complaint designated "61", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

SIXTY-SECOND: Defendant, **AEC, INC.**, denies each and every allegation of the paragraph of the Verified Complaint designated "62", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

SIXTY-THIRD: Defendants deny each and every allegation of the paragraph of the Verified Complaint designated "63", and respectfully reserves and refers all questions of law, fact and/or conclusions raised therein to the Honorable Court at the time of Trial.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

SIXTY-FOURTH: If the injuries and damages were sustained by the plaintiff at the time and place and in the manner alleged in the Verified Complaint, such damages and injuries are attributable, in whole or in part, to the culpable conduct of the plaintiff, and if any damages are recoverable against this defendant, the amount of such damages shall be diminished in the

proportion which the culpable conduct attributable to the plaintiff bears to the culpable conduct which caused the damages.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

SIXTY-FIFTH: Any and all risks, hazards, defects and dangers alleged were of an open, obvious and apparent nature and inherent and known or should have been known to the plaintiff herein, and the plaintiff willingly and voluntarily assumed all such risks, hazards, defects and dangers. If it is determined that the plaintiff assumed the risk, the answering defendants plead said facts in diminution of the damages in the proportion which the culpable conduct attributable to the plaintiff bears to the culpable conduct which caused the damages.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

SIXTY-SIXTH: If the injuries and damages were sustained by the plaintiff at the time and place and in the manner alleged in the Verified Complaint, such damages and injuries are attributable, in whole or in part, to the culpable conduct of third parties, and if any damages are recoverable against the answering defendant, the amount of such damages shall be diminished in the proportion which culpable conduct attributable to third parties bears to the culpable conduct which caused the damages.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

SIXTY-SEVENTH: The product allegedly manufactured and sold by the defendants was modified and customized by third-parties, and the actions of the third-parties caused and/or contributed to the damages allegedly sustained by the plaintiff.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

SIXTY-EIGHTH: The plaintiff's claim should be dismissed because any products produced and/or distributed by the defendants were not defective or unreasonably dangerous.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

SIXTY-NINTH: The plaintiff's claim against the defendants should be dismissed because of the misuse of the product.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

SEVENTIETH: The plaintiff's claim against the defendants should be dismissed because the plaintiff's alleged damages are the result of intervening and/or superseding causes.

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE

SEVENTY-FIRST: The plaintiff's claim against the defendants should be dismissed because plaintiff's failed to mitigate, minimize or avoid the damages about which they now complain.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

SEVENTY-SECOND: The plaintiff's claim against the defendants should be dismissed because any products provided by the defendants were produced and/or distributed according to the state of the art and knowledge when such products were produced and distributed.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

SEVENTY-THIRD: The plaintiff's claim against the defendants should be dismissed because at all relevant times the defendants fully performed and complied with all applicable federal and state regulations.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

SEVENTY-FOURTH: The plaintiff's claim against the defendants should be dismissed since any product supplied by the defendants was not unreasonably dangerous.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

SEVENTY-FIFTH: The answering defendants seek mitigation and/or a reduction of damages which plaintiff seeks for the past, present and/or future costs of medical care, dental care, custodial care, rehabilitation services, lost earnings and other economic loss, which cost or expenses were paid to Plaintiff or for which Plaintiff has been reimbursed by or from any collateral source.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

SEVENTY-SIXTH: The plaintiff's Verified Complaint herein fails to state a cause of action upon which relief may be granted.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

SEVENTY-SEVENTH: Defendants assert that they intend to rely upon such other defenses as may be available or apparent during discovery proceedings in this case and thereby reserve their rights to amend their Verified Answer to plead said defenses.

WHEREFORE, the defendants seeks the following relief:

- 1) dismissal of Plaintiff's Verified Complaint and;
- 2) costs, disbursements and attorneys fees incurred in this action.

Dated: New York, New York
September 12, 2007

Yours, etc.

BIVONA & COHEN, P.C.
Attorneys for Defendants, **NELMOR
CO., INC., AEC NELMOR & ACE INC.**
88 Pine St., 17th FL, Wall Street Plaza
New York, New York 10005
(212) 363-3100

BY: **S/**
RICHARD M. FEDROW, ESQ.
(RMF-2059)

TO:

TROLMAN, GLASER & LICHTMAN, P.C.
Attorneys for Plaintiff
777 Third Avenue, 35th Floor
New York, New York 10017
(212) 750-1200

STATE OF NEW YORK)

SS:

COUNTY OF NEW YORK)

RICHARD M. FEDROW, ESQ., an attorney-at-law duly admitted to practice in the Courts of the State of New York, affirms the following under penalties of perjury:

1. I am a Member of the law firm of BIVONA & COHEN, P.C., attorneys for the Defendants, **NELMOR CO., INC., AEC NELMOR and AEC INC.**, in the within action; that I have read the forgoing Answer and know the contents thereof; that the same is true of my own knowledge except as to the matters therein stated upon information and belief, and that as to those matters I believe it to be true.

2. I further state that the grounds for my belief as to all of the matters not stated upon my knowledge, and the source of my knowledge as to all the matters therein stated, is the evidence in my possession.

3. I further state that the reason this verification is not made by the defendants is that said defendants are not now located in the County where affirmant has its office.

Dated: New York, New York
September 12, 2007

s/

RICHARD M. FEDROW